

SENATE BILL NO. 379

INTRODUCED BY J. LASLOVICH

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WHEN THE OFFICE OF STATE PUBLIC DEFENDER MAY BE APPOINTED AS COUNSEL IN POSTCONVICTION PROCEEDINGS; AMENDING SECTION 46-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-8-104, MCA, is amended to read:

**"46-8-104. Assignment of counsel after trial -- definition.** (1) Any court of record may order the office of state public defender, provided for in 47-1-201, to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to ~~defend~~ represent any ~~defendant~~, petitioner; or appellant in any postconviction ~~criminal~~ action or proceeding brought under Title 46, chapter 21, if the ~~defendant~~, petitioner; or appellant ~~desires~~ is eligible for the appointment of counsel and is unable to employ counsel demonstrates by reference to specific facts and documents in the record and by citation to statutory, jurisprudential, or constitutional authority that:

(A) THE DISTRICT COURT DETERMINES THAT A HEARING ON THE PETITION IS REQUIRED PURSUANT TO 46-21-201;

(B) THE STATE PUBLIC DEFENDER'S OFFICE REQUESTS APPOINTMENT OF A PUBLIC DEFENDER AND DEMONSTRATES GOOD CAUSE FOR THE APPOINTMENT;

(a)(C) a statute specifically mandates the appointment of counsel;

(b)(D) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e)(E) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" means INCLUDES those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing English."

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2           NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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